

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 4

EVELYN TREINIES,

Petitioner,

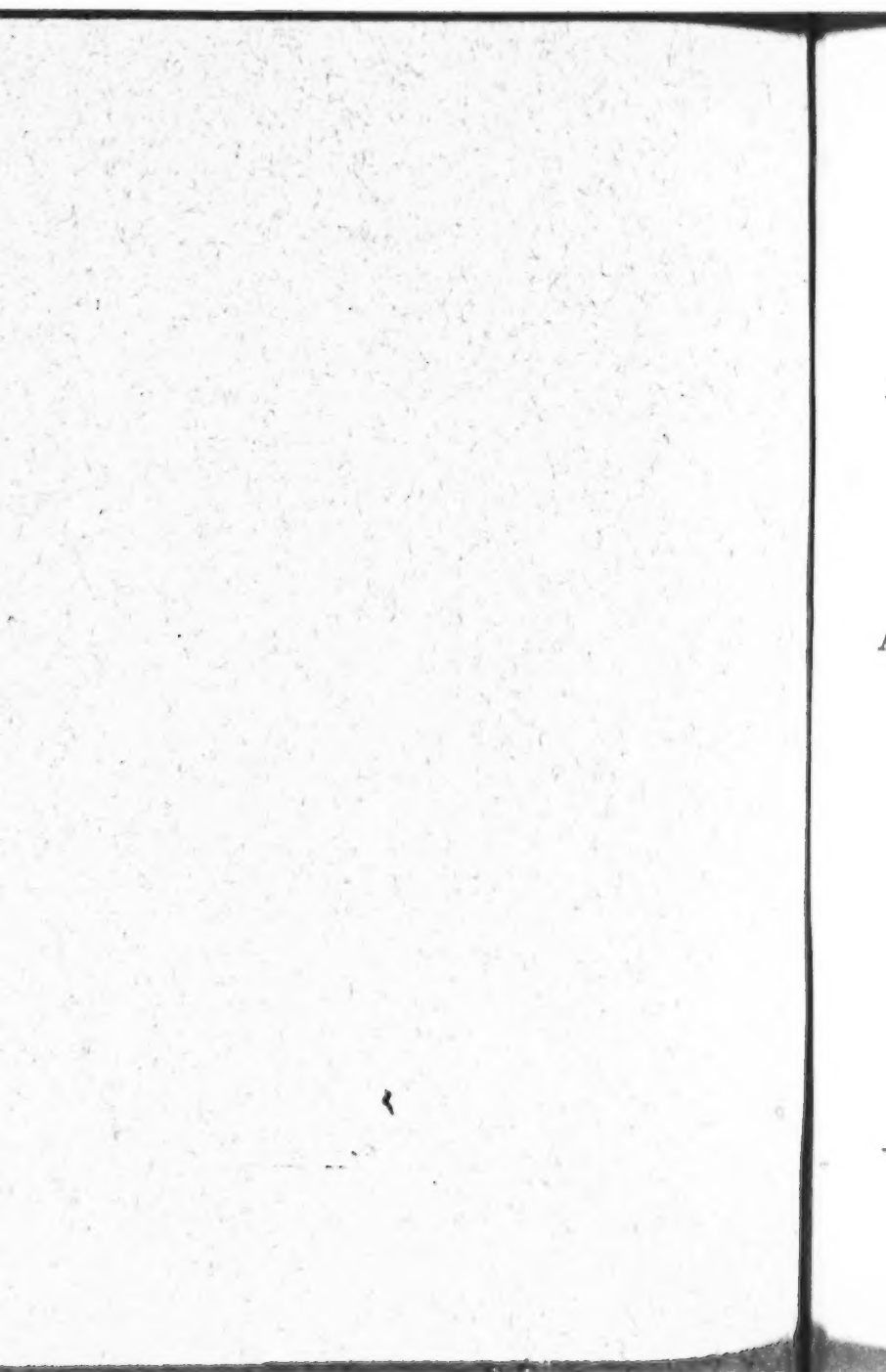
vs.

**SUNSHINE MINING COMPANY, KATHERINE
MASON, T. R. MASON, LESTER S. HARRISON,
GRACE G. HARRISON, WALTER H. HANSON,
EDNA B. HANSON, AND F. C. KEANE.**

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCVIT AND BRIEF IN SUP-
PORT THEREOF.**

THOS. D. AITKEN,
Counsel for Petitioner.

ALFRED C. SKAIFE,
Of Counsel.



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No. 626

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EDNA B. HANSON, AND F. C. KEANE.**

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.**

To the Honorable the Supreme Court of the United States:

The undersigned on behalf of the above named petitioner prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Ninth Circuit entered in the above entitled case on November 10, 1938, and printed in 99 Fed. (2nd) 651.

Summary and Short Statement of the Matters Involved.

A more detailed statement of the facts involved will be found in the brief accompanying this petition, but suffi-

cient of the facts to indicate the questions involved will be presented now.

In 1923 the Superior Court of the State of Washington, in estate proceedings then pending before it in probate, made a final distribution of all the *inventoried* property (R. 123). The decree of distribution also provided that there be distributed in the same proportion "any other property not now known or described, which may belong to said estate * * * " (R. 285). Because it was considered valueless at the time, certain stock of the respondent Sunshine Mining Company was not inventoried as a part of the estate. Later on it became extremely valuable and is the subject of the present litigation.

In December, 1934, respondent Katherine Mason, (she and those in interest with her are hereafter referred to as the Idaho Group) petitioned in the said Washington probate proceedings that the stock mentioned be decreed to be her property by reason of a trust agreement that had been entered into between her and the assignor of the petitioner herein. This was resisted by said assignor and the Washington Superior Court, in the said probate proceedings, entered its final decree of distribution, declaring title to the stock in question to be in petitioner's assignor (R. 282-298), and restrained the Idaho Group from further litigating the matter in the courts of Washington. The estate proceedings were then formally closed and the executor discharged.

Prior to the decree of the Washington Probate Court, the Idaho Group had filed in the State Court of Idaho an action to quiet title to the stock above mentioned naming therein as defendants the petitioner herein, her assignor, John Pelkes, the Sunshine Mining Company, and others (R. 125). That case was still pending and had not been decided when the decree of the Washington Superior Court, sitting in probate, was entered.

The Superior Court of the State of Washington, while sitting in probate, is a court of general jurisdiction. (See Art. 4, Par. 6, Const. of State of Wash. and Sec. 1533 Rem. Rev. Stats.)

The Idaho Group brought prohibition proceedings in the Supreme Court of the State of Washington to restrain the Washington Superior Court from proceeding in the pending probate proceeding alleging lack of jurisdiction in the Washington courts and pleading the existence of the *Idaho* case. The Washington Supreme Court denied the petition for a writ of prohibition and upheld the jurisdiction of the Washington Superior Court (R. 291).

While the Idaho quiet title action was still pending, petitioner herein with others having similar interests (who will hereafter be referred to herein as the Washington Group) filed a suit in equity (R. 244-255) in the Superior Court of the State of Washington, for Spokane County, ancillary to, and to enforce the decree of, the Washington Superior Court, entered in probate, the probate proceedings having been previously closed. The venue of this action was subsequently changed to Yakima County on the motion of the Sunshine Mining Company, which was named as one of the defendants in the suit.

The Idaho Group proceeded with the *Idaho* case and obtained therein a decision in their favor as owners of the stock in question. The Washington Group had appeared in the *Idaho* case and denied the jurisdiction of the Idaho State courts (R. 134). The Idaho District Court decided that one-half of the stock belonged to each group (R. 165); the Supreme Court of Idaho, on appeal, decided that all of the stock belonged to the Idaho Group (R. 167, 191-192).

The result was that the Washington courts had decided that the stock belonged to the Washington Group; and the Idaho Court had decided that it belonged to the Idaho Group. Each court had had before it all of the parties

including the Sunshine Mining Company. In addition, the Washington Court in the equity action had appointed a receiver to take into his possession the stock in question (R. 9, 262). He took into his possession petitioner's certificate of stock (R. 23-24, 47-48, 55-56). Thus the indicia of ownership were actually in *custodia legis*. In each case the group from one State had denied the jurisdiction of the court of the other State.

Respondent herein, the Sunshine Mining Company, a defendant in both the Washington and Idaho suits, thereupon brought an action in the U. S. District Court of Idaho under the Federal Interpleader Act against both the Washington Group and the Idaho Group and also against Judge A. W. Hawkins of the Superior Court of Washington for Yakima County, wherein the equity case was pending, and against the Receiver appointed by that court to take into possession, and hold the title to, the stock in question (R. 1).

Petitioner herein, Judge Hawkins, and the receiver, challenged the jurisdiction of the U. S. District Court to entertain the action under the Interpleader Act (R. 15, 24, 26, 345). That court held that it had jurisdiction but also held that the Sunshine Mining Company was precluded by the Idaho State Court decision, in which it was a defendant, from bringing this interpleader action if its purpose was to upset the Idaho decision (R. 319, 336; 19 Fed. Suppl. 587). The court consequently held that the Idaho decision was determinative of the case. It utterly failed to realize that, on the same basis, it was equally precluded from attempting to upset the Washington decision.

The questions relating to the jurisdiction of the U. S. District Court under the Interpleader Act were also argued in the Circuit Court of Appeals on appeal from the U. S. District Courts' decision. The Circuit Court of Appeals upheld the jurisdiction of the District Court (R. 349) but at the same time decided that the issues of fact and law that

were necessary to be decided in the District Court in order to determine whether or not it had jurisdiction in the Interpleader suit could not be "relitigated" in the Interpleader suit because the Idaho courts had determined that the Washington courts had no jurisdiction in the premises (R. 352). The court, however, failed to decide why it discriminated against the Washington courts which had previously determined that *they had exclusive and prior jurisdiction* and that the Idaho courts had not.

Reasons for Granting the Writ.

1. The case is one of first impression, inasmuch as no effort has ever been made previously under the Interpleader Act to have a Federal Court make effective one of two opposing judgments of two different States involving the same *res* and parties.

2. The Circuit Court of Appeals refused to examine the laws of the States of Washington and Idaho and the facts upon which the courts of those States respectively based their claims of jurisdiction and their conflicting judgments concerning the same property and parties. By so refusing, the Circuit Court of Appeals

First: has initiated a procedural precedent erroneous in law, and opposed to the decisions of this Supreme Court in general, and particularly to the decision in *Pendleton v. Russell*, 144 U. S. 640; 36 L. Ed. 574, which case is cited as authority for its decision;

Secondly: it has initiated an erroneous and dangerous precedent, amounting to an absurdity, in that its decision, in effect, holds that when a Federal Court is called upon, under the Interpleader Act, to decide which of two different and opposing State court judgments has a proper jurisdictional basis or is to be adopted because of prior or exclusive juris-

diction, it need not examine the facts or laws on which the opposing claims of jurisdiction are based ("relitigate the issues") but, despite the full faith and credit clause of the U. S. Constitution (Art. IV Sec. 1), may arbitrarily adopt the decision of either of the State courts which has inquired into the jurisdiction of the other and pronounced against that jurisdiction.

We say "arbitrarily" above because, if the courts of two States have each decided that the judgment of the other was without jurisdiction, the Federal Court must examine the facts and the laws of both States in order to determine which State tribunal first acquired jurisdiction or had exclusive jurisdiction. A refusal so to examine ("relitigate the issues") and a decision in favor of one State because it declared the other without jurisdiction simply favors one State arbitrarily and is a denial of the equal protection of the laws accorded by the Fourteenth Amendment.

3. The Circuit Court of Appeals has here initiated a Federal procedure clearly erroneous and contrary to the decision of this Court in *Pendleton v. Russell*, 144 U. S. 640; 36 L. Ed. 574, and for which there is no authority.

The issue involved in both States was the title to the *res* as between the same claimants. "That issue—as to whether the Washington court had jurisdiction to render the judgment relied on by appellants—had also been raised in the Idaho suit." (See decision of the Circuit Court of Appeals reported in 99 Fed. (2d) 651.) The Circuit Court of Appeals held that "The Idaho court was empowered to determine that issue" and cited *Pendleton v. Russell*, *supra*, as authority for the statement. While the *Pendleton* case is authority for the ruling that a State court, in which full faith and credit for the judgment of another State is sought, is empowered to examine into the jurisdiction of the court of the State that rendered the judgment, it is not authority

for a ruling that that State's courts can be deprived of their jurisdiction by the erroneous fiat of the other State court.

The decision of the Circuit Court of Appeals here in question, conflicts with the *Pendleton* case in that in the latter case the Federal Courts and the Supreme Court actually examined into the facts and the laws of the opposing States and decided which State's courts were right. In other words in the *Pendleton* case the issues were "*relitigated*".

The State courts of Washington have decided that under the laws of that State a Superior court sitting in probate is a court of general jurisdiction and that it has a continuing jurisdiction of estate proceedings, and particularly of extra judicial settlements amongst heirs and devisees, until the estate is finally closed. The contrary decision of the U. S. District Court herein is in conflict with the decisions of the State of Washington where the latter should be controlling, and is a direct and unjustified interference with the judicial proceedings of a State, no Federal question being involved. (U. S. Const. Art. IV Sec. 1).

By their decisions the U. S. District Court and the Circuit Court of Appeals have directly conflicted with decisions of this Supreme Court, to wit, in the following respects:

(a) The District Court gave controlling effect to the decision of the Supreme Court of Idaho, because the U. S. Supreme Court refused to review that decision on certiorari and held that:

"The denial of a petition for writ of certiorari by United States Supreme Court is not a precedent for any other case, *but is affirmance of judgment in particular case sought to be reversed.*"

Sunshine Mining Co. v. Treinies, 19 Fed. Suppl. 587, Syllabus 8 and text p. 593. Italics ours.

This directly conflicts with this Supreme Court's decision in *United States v. Carver*, 260 U. S. 482, 490;

(b) The District Court declared that the Washington decision was without jurisdictional basis and held that:

“Under Washington Law, Superior Court sitting in probate has no continuing jurisdiction to adjudicate property of estate after it is decreed in decree of distribution (Rem. Rev. Stat. Wash. § 466, 1371, 1533)’’:

Sunshine Mining Co. v. Treinies, supra, syllabus 3.

Inasmuch as the fact was that the property claimed to have been distributed was never inventoried as part of the estate, the foregoing statement of law conflicts directly with Washington law as set out in

2 Woerner Am. Law Adm., P. 1374, 1375, 1376;

Hazelton v. Bogardus, 8 Wash. 102, 35 Pac. 602;

Boardman v. Watrous, 178 Wash. 690, 35 Pac. (2d) 1106;

Rem.'s Rev. Stats., Sec. 1462, 1465;

McLaughlin v. Barnes, 12 Wash. 373, 375, 41 Pac. 62;

State ex rel. Reser v. Superior Court, 13 Wash. 25, 42 Pac. 630;

In re Dyer's Estate, 161 Wash. 498, 297 Pac. 196, 20 R. C. L. 725;

Bayer v. Bayer, 83 Wash. 430, 145 Pac. 433;

Wright v. Suydam, 79 Wash. 550, 40 Pac. 578.

It is also in conflict with the following U. S. Supreme Court cases:

Robinson v. Fair, 128 U. S. 53, 32 L. Ed. 422;

Mutual Reserve Ass'n v. Phelps, 190 U. S. 147, 47 L. Ed. 987;

Kline v. Burke Const. Co., 260 U. S. 226, 67 L. Ed. 226.

The decision of the U. S. Circuit Court of Appeals, review of which is sought here, held:

(a) That the U. S. District Court had jurisdiction under the Interpleader Act to entertain the action. That ruling is

in direct conflict with the recent case of *Worcester County Trust Co. v. Riley*, 58 S. Ct. Rep. 185, in which, in a situation similar to that in the case at bar, the use of the Interpleader Act is held to be in conflict with the Eleventh Amendment which provides that the Judicial Power of a District Court does not extend to controversies between the citizens of a State and another State. Here Judge A. W. Hawkins, as Judge of the Superior Court of Washington for Yakima County, and J. C. Cheney the receiver appointed by him, were made respondents, thus indirectly making the State of Washington a party by naming as defendants its officers who were then in control of the *res*.

(b) That, since the Idaho court was empowered to determine the issue "as to whether the Washington Court had jurisdiction to render the judgment relied on by Appellants", that issue "could not be relitigated in the Interpleader suit". This is in direct conflict with *Pendleton v. Russell*, 144 U. S. 640, 36 L. Ed. 574 (cited by the Circuit Court of Appeals); *Sanders v. Armour Fertilizer Works*, 292 U. S. 190, 91 A. L. R. 950; *Sovereign Camp, W. of the W., v. Bolen*, decided in the U. S. Supr. Ct., Nov. 7, 1938, reported in advance sheets Vol. 83 L. Ed. 58. It thereby denied to petitioner herein the equal protection of the laws accorded by the Fourteenth Amendment.

That by its adopting the Idaho court's interpretation of Washington probate law the Circuit Court of Appeals has decided an important question of local law in a way probably in conflict with applicable local decisions;

That by deciding that the U. S. District Court had jurisdiction under the Interpleader Act, the Circuit Court of Appeals has decided an important question of general procedural law in a way probably untenable, and has decided an important question of Federal law which has not been, but should be, settled by this Court;

That in refusing to examine the jurisdictional facts and the applicable laws of Washington and Idaho ("relitigate the issues") the Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 8730 "Evelyn H. Treinies, Seattle-First National Bank (Spokane and Eastern Branch), Administrator with the Will Annexed of the Estate of John Pelkes, Deceased, and J. C. Cheney, as Receiver, Appellants, vs. Sunshine Mining Company, a Corporation, Katherine Mason and T. R. Mason, wife and husband, Lester S. Harrison and Grace G. Harrison, husband and wife, Walter H. Hanson and Edna B. Hanson, husband and wife, and F. C. Keane, Appellees", and that the said judgment of the United States Circuit Court of Appeals for the Ninth Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

EVELYN H. TREINIES,
By THOS. D. AITKEN,
Counsel for Petitioner.

ALFRED C. SKAIFE,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

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BRIEF IN SUPPORT OF THE PETITION.

Opinions Below.

The opinion of the Circuit Court of Appeals is reported in 99 Federal Reporter (2nd series) 651. The opinion of the District Court of the United States for the District of Idaho is reported in 19 Federal Supplement 587.

Statutes Involved.

Federal Interpleader Act (Section 24 (26) of the Judicial Code as amended Jan. 20, 1936, c. 13, § 1, 49 Stat. 1096; 28 U. S. C. A. subdivision (26) of § 41); Art. IV, par. 6, Constitution of State of Washington; § 1533 Reming-

ton's Revised Statutes of Washington; Constitution of the U. S. Article II, sec. 2, Article IV, sec. 1, and Amendments XI and XIV.

Jurisdiction.

Petitioner invokes the jurisdiction of this Court under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, (Sec. 347 (a), Tit. 28 U. S. A. C.)

Cases Sustaining Jurisdiction.

The following cases sustain the jurisdiction of this Court in the premises: *Worcester County, etc., v. Riley*, 58 Sup. Ct. Rep. 184; *Sanders v. Armour Fertilizer Works*, 91 A. L. R. 950, 292 U. S. 190.

Assignment of Errors.

1. The Circuit Court of Appeals erred in determining that the District Court had jurisdiction of the action under the Interpleader Act.

2. The court erred in holding that the judgment of the courts of the State of Idaho was determinative of the issue of ownership, thereby ignoring the judgment of the courts of the State of Washington affecting the same subject matter and parties.

3. In an action brought under the Interpleader Act wherein it was necessary to determine which of two opposing judgments of two different States should be given effect, assuming jurisdiction in the Federal District Court so to determine, it was error for the Circuit Court of Appeals to refuse to consider the issues of fact and the applicable laws of the two States in order to determine whether they acted with or without jurisdiction.

4. The Circuit Court of Appeals and the District Court erred in not holding that for the purpose of determining

the meaning of the laws of the State of Washington the laws and the decisions of the Courts of that State must be given effect in preference to the interpretations of the courts of some other State.

5. The Circuit Court of Appeals erred in not reversing the judgment of the District Court and in failing to hold that the decisions of the Washington courts were first as to time and were prior and exclusive as to jurisdiction.

Statement of the Case.

The facts in connection with this litigation are complicated and cover a long period of time. Having in mind that this Supreme Court is interested, not so much in settling litigated questions between individuals as in settling questions which involve either a principle of Federal law or practice, a constitutional question, or an important Federal question affecting the people in general or bearing on procedural matters of general interest, we will state only facts emphasizing such points.

Proceedings were begun in the Superior Court of Washington in April, 1922, to probate the will of Amelia Pelkes, who died the owner of 30,598 shares of the capital stock of Sunshine Mining Company, a Washington corporation, having its principal place of business at Yakima, Washington.

On August 9, 1923, a decree of distribution was entered by the Superior Court, sitting in probate, distributing all of the estate "hereinafter particularly described * * * and any other property not now known or described, which may belong to said estate * * *". The estate proceedings, were, however, not closed.

We will hereafter refer to the Pelkes-Treinies litigants as the "Washington Group" and to the Masons, and those claiming under them, as the "Idaho Group".

On August 4, 1934, the Idaho Group filed an action in the courts of Idaho against the Washington Group and the Sunshine Mining Company, claiming ownership in the stock under an alleged oral agreement under which the Washington Group was claimed to have held the stock in trust for the Idaho Group. The Washington Group appeared in the Idaho action and denied the facts and the jurisdiction of the Idaho court, basing their denial of jurisdiction on the fact that the matter was still within the jurisdiction of the Washington court, sitting in probate, the estate proceedings never having been closed.

Thereupon, on December 19, 1934, the Idaho Group filed a petition in the Washington probate proceedings wherein they alleged that the executor had failed to have the proceedings closed and also that the Sunshine stock was an uninventoried and *undistributed* asset of the estate which Katherine Mason of the Idaho Group claimed to own by virtue of an alleged oral agreement of partition made subsequent to the decree of distribution in 1923. John Pelkes, the executor, opposed the petition and claimed the stock as his own under the said agreement asserting that he had in 1923 given Katherine Mason, in full settlement, the more valuable half of the property of the estate instead of the one-quarter distributed to her and that he had kept certain valueless items, including the uninventoried Sunshine stock.

The Washington court, after a hearing, awarded the Sunshine stock to Pelkes (the Washington Group) and restrained the Idaho Group from further litigating the matter in any court and finally closed the estate on May 31, 1935.

The Idaho Group petitioned the Supreme Court of Washington for a writ of prohibition to prohibit the Washington Superior Court from continuing with the *probate proceedings*, alleging lack of jurisdiction in the Washington Superior Court sitting in probate. This petition was denied and

the jurisdiction of the Washington Superior Court was sustained.

The Idaho action was then still pending and involved exactly the same issues as to the Sunshine stock as were determined in the Washington probate proceeding.

In the Idaho action, on September 28, 1935, part of the stock was adjudged to be the property of the Idaho Group, and the balance, the property of the Washington Group. On appeal, the Supreme Court of Idaho, on July 23, 1936, modified the decision and awarded ALL of the stock to the Idaho Group.

At this point we thus have a probate decree in Washington PRIOR IN DATE, AND BASED ON JURISDICTION OF THE RES and of the ESSENTIAL PARTIES IN THE WASHINGTON AND IDAHO GROUPS, declaring the Washington Group owners of the Sunshine stock and a later judgment of the Idaho court, directly to the contrary, declaring the Idaho Group owners. Each judgment was subsequently confirmed by the Supreme Court of the State in which it was rendered.

Subsequently on August 12, 1936, Pelkes (of the Washington Group) instituted an action in equity in a Washington court against the Idaho Group *and the Sunshine Mining Company*, to enforce the decree of the Washington court made in the probate proceedings. The proceedings in this equity case were pending when further action was restrained by injunction issued by the U. S. District Court in the present action. In the equity case the Washington court, through its receiver, assumed control of the stock. Technically the stock was never in the possession of the Sunshine Mining Company, although the accrued dividends were.

At this juncture the Sunshine Mining Company filed the present case which was a bill of interpleader in the United States District Court, for the District of Idaho, Northern Division, filed under the Interpleader Act, 28 U. S. C. A.

Sec. 41, subd. 26, enacted January 20, 1936. (The District Court decision is reported in 19 Fed. Supp. 587.)

The bill of interpleader included as defendants not only the Washington and Idaho Groups but also the Hon. A. W. Hawkins as Judge of the Superior Court of the State of Washington, before whom the equity case was pending, and John Cheney, the receiver appointed in that case, to take into his possession John Pelkes' interest in the stock. It prayed that they, the judge and the receiver, be restrained from performing their judicial duties with reference to the stock. Obviously this calls for an interference by a Federal court with the judicial proceedings of a State, prohibited by the Eleventh Amendment to the U. S. Constitution. It is also an effort by a corporation which has been a defendant in litigation concerning the same *res* and between the same parties in two different States, wherein diametrically opposite judgments have been rendered, to have a Federal District Court, under the Interpleader Act decide which of the two State courts' judgments must be obeyed.

The judgments of both the Washington and the Idaho courts were pleaded in the interpleader suit.

First in order of time, the Washington courts held that the Idaho courts had no jurisdiction of the SUBJECT MATTER and gave judgment in favor of the Washington Group. The Idaho courts subsequently held that the Washington courts had no jurisdiction and gave judgment in favor of the Idaho Group. Each State's courts enjoined the parties from the other State from proceeding in the courts of that other State. Each State's courts would undoubtedly punish the petitioner (Sunshine Mining Company) for a violation of its order and would endeavor to enforce its judgment unless restrained by a decree of Federal authority, provided the Federal courts had jurisdiction so to restrain.

Such protection the Sunshine Mining Company has sought by filing this action. But the Circuit Court of Appeals has

decided that "the issue * * * could not be relitigated" because one of the States (Idaho) had determined the issue. It fails to say, and, in effect, refuses to say, why Idaho's determination of the issue deserves Federal protection and Washington's does not.

The decision in the Circuit Court of Appeals said:

"The stock in controversy was formerly the property of John Pelkes and his wife, Amelia Pelkes, residents of Washington. Amelia Pelkes died testate on April 24, 1922. Her will was admitted to probate in a State Court of Washington. Being community property the stock became, for purposes of administration, a part of her estate. In the Interpleader suit, it was alleged by appellants that the stock had not been distributed, but was still in custody of the Washington court, and that, therefore, the Idaho Court had no jurisdiction to entertain the Idaho suit. The Masons denied these allegations and alleged that the stock was distributed on August 9, 1923, eleven years before the Idaho suit was commenced. That issue—as to when the stock was distributed—had been raised by Pelkes in the Idaho suit. The Idaho Court was empowered to determine that issue and did determine it in favor of the Masons, holding that the stock was distributed on August 9, 1923. *The issue thus determined could not be relitigated in the Interpleader suit.*" (Italics ours.)

The Circuit Court of Appeals said "The Idaho Court was empowered to determine that issue" and cited *Pendleton v. Russell*, 144 U. S. 640, 644, as authority. We will demonstrate hereinafter that that case is direct authority in favor of our contentions herein.

The Circuit Court of Appeals decision places the Federal jurisdiction in an absurd position. It says, in effect: "It is our duty to determine which of these opposing State Courts is correct. But we refuse to decide that question, and, since Idaho says Washington had no jurisdiction, and

since we have decided that we will not examine the facts that would determine which is right ("relitigate the issue") we decide for Idaho". Idaho's determination that Washington had no jurisdiction will be sustained because Idaho has so decided; Washington's determination that Idaho had no jurisdiction will *not* be sustained *because Idaho has so decided*. That is really the logic of the decision.

If the United States courts have jurisdiction under the Interpleader Act, then the error of the Circuit Court of Appeals lies in this: that, having the duty to determine which of two inconsistent judgments rendered in different States was entitled to full faith and credit in the territory of the other, and also to determine which judgment was entitled to recognition by the Federal courts, it failed to make an examination of the LAWS OF BOTH States and the jurisdiction FACTS of the cases, in order to determine which State, if either, had controlling jurisdiction. A decision favoring the judgment of either State WITHOUT an examination of the jurisdictional facts in both cases and the laws of both States was obviously an ARBITRARY and erroneous act, which should be reviewed by this Supreme Court for reasons of public interest hereinafter set forth, and for the reason that the U. S. District Court and the Circuit Court of Appeals have denied to the courts of the State of Washington the full faith and credit accorded them by Art. IV, sec. 1, of the U. S. Constitution.

In both the U. S. District Court and in the Circuit Court of Appeals the question of the jurisdiction of those courts to interfere with the performance of the acts of the judicial officers of the State of Washington was presented and considered. However, neither court commented on those questions.

The immunity of the exclusive jurisdiction of the courts of Washington, to impound, control and quiet title to stock

in a corporation over which it had jurisdiction, from interference either by the courts of another State or of the Federal courts was urged in both the U. S. District Court and the Circuit Court of Appeals and is not being raised for the first time here. (See Supplemental Assignment of Error filed with permission in the Circuit Court of Appeals, and Answers of Judge Hawkins and Receiver Cheney (R. 345-346).

Questions Presented.

1. The U. S. District Court held that, the Idaho Supreme Court, having the parties before it, including the petitioner in interpleader, and having adjudged the ownership of the property to be in one of the parties defendant, the petitioner in interpleader was by reason of that judgment barred from bringing the interpleader action in so far as it sought to obtain a decree contrary to the Idaho decree. The record shows that the same parties, including the petitioner in the interpleader suit, appeared before the courts of the State of Washington, which had prior and exclusive jurisdiction over the property and parties, and that a judgment contrary to the Idaho judgment was rendered by the Washington courts. Such being the case, was not the Washington judgment equally a bar to the interpleader action in so far as such action sought a decree contrary to the Washington decree?

Therefore is not this interpleader suit merely an effort to seek a judgment in a U. S. court, which, in cases involving no Federal question, has only concurrent jurisdiction with a State court, for the purpose of overruling the judgment of a State court, a proceeding clearly beyond the jurisdiction of the Federal courts and in violation of Article IV, Section 1, and also of the Eleventh Amendment to the U. S. Constitution?

The U. S. District Court, in asserting jurisdiction of the interpleader suit, relied on two erroneous findings:

First. It found that the decision of the Supreme Court of Idaho, which held that the Washington Superior Court sitting in probate was without jurisdiction to make its decree of May 31, 1935, and that exclusive jurisdiction was in itself, had been AFFIRMED by the Supreme Court of the United States BECAUSE that Court had denied a petition for a writ of *certiorari* seeking to review the Idaho Supreme Court's decision. This holding is clearly erroneous and indirectly contravenes this Court's decision in the case of *Hamilton-Brown Shoe Co. v. Woolf Bros. & Co.*, 240 U. S. 258, 60 L. Ed. 634; *U. S. v. Carver*, 260 U. S. 482, 490.

Second. It found that the decree of the Washington court sitting in probate made May 31, 1935, was without the jurisdiction of that court because the probate proceedings had been closed with the final decree of distribution entered in April, 1923. This finding is erroneous because it was made without consideration of the Washington law and because it is contrary to the decisions of the Washington courts directly deciding the very questions at issue in the *Idaho* case. Such procedure constitutes a direct denial of the right of the State of Washington in the courts of Idaho to have full faith and credit accorded to its acts and proceedings in the courts of ALL States under Art. IV, sec 1, of the Constitution of the United States.

2. The question of jurisdiction having been fully presented in both State courts, is it not the duty of the Circuit Court of Appeals to examine the facts appearing in the record and the laws of the two States involved (*i. e.* "re-litigate the issues") in order to determine whether or not the present case is properly within the jurisdiction of the District Court under the Interpleader Act?

3. Where the ownership of stock in a corporation has been adjudged to be in one party by the courts of the State of Washington and to be in a different party by the courts of Idaho, has a U. S. Court jurisdiction under the Interpleader Act to determine which of those judgments be given effect?

4. Is a corporation, which has been a defendant in the courts of Idaho which declared title to certain of its corporate stock to be in the plaintiff group, and which is also a defendant in an equity action pending in the State of Washington and brought to enforce a previous decree of the courts of Washington antedating the Idaho judgment and decreeing title to be in a different Washington group, precluded by such decree and judgment from bringing an action in the U. S. courts under the Interpleader Act designed to reverse one or the other of the said judgments or decree or to restrain the continuance of the pending equity action?

5. Can the Federal Interpleader Act be availed of to decide which of two State courts, which have decided diametrically opposite to each other concerning the same *res* and persons, is correct in its decision and, if both are correct, give relief to the petitioner under the Interpleader Act?

6. Can the Federal Interpleader Act be availed of to take out of the custody of a State court, which has properly assumed jurisdiction, and out of the custody of a receiver appointed by it, certain intangible property, by ordering certain of the respondents so to dispose of the indicia of ownership of the intangible property as to effectually deprive the State court and its receiver of their power over the property?

Summary of the Argument.

Petitioner herein claims that the Washington Superior Court, sitting in probate in the Amelia Pelkes Estate, had exclusive jurisdiction over the inventoried and uninventoried property of the estate; that this jurisdiction was a continuing one and controlled all estate matters, including agreements among distributees made after decree of distribution, until the estate was finally closed and the executor discharged. The Washington Superior Court, even if sitting in probate, was a court of general jurisdiction empowered to decide questions of title to the assets of an estate as divided by the heirs among themselves, especially when those questions are submitted to the court by the heirs themselves in the estate proceedings prior to the closing of the same.

The final decree of that court made May 31, 1935, bound all parties to the same just the same as any other judgment would and was entitled to full faith and credit in all courts. The subsequent action in equity, intended to give effect to and to aid the probate decree, was merely ancillary to the latter and a continuation of the jurisdiction of the Washington courts over the *res* and the persons.

Certain of the parties included in the Idaho Group who had appeared in the estate proceedings and received property under the distribution in 1923, had in August, 1934, brought quiet title proceedings covering the Sunshine stock which was uninventoried property of the Amelia Pelkes estate. They then voluntarily filed a petition in that estate asking the distribution to themselves of the same uninventoried Sunshine stock. It was as a result of this petition and a resulting cross petition that the Washington decree of May 31, 1935, was rendered against the Idaho Group. Subsequently this group succeeded in securing a judgment in the Idaho quiet title suit in their favor dia-

metrically opposed to the probate decree of the Washington court.

Citizens of Another State Making State Officials, Who Are Acting as Such, under Constitutional Statutes, Parties Defendant, in Effect, Make the State a Party to the Action and Thereby Violate the Eleventh Amendment to the Constitution of the United States.

Since we are primarily concerned with this case from the standpoint of the jurisdiction of the U. S. courts under the Interpleader Act we may assume, for the purpose of argument only, that both the Washington and the Idaho State courts correctly arrived at their decisions under their respective laws, trial rules and evidence presented.

We, then, have a case where a corporation, confronted with diametrically opposed judgments of the courts of Washington and Idaho respectively with reference to the disposition of certain stock and stock dividends, has brought an action in the U. S. District Court under the Federal Interpleader Act in order to have the U. S. court decide which State court's judgment it is to obey. The interpleader action seeks not only to save the petitioner the embarrassment of possible double vexation (and possible double liability) for the same debt but seeks to have the judicial officers of Washington (Judge Hawkins and Cheney, the receiver) enjoined by a Federal court from functioning as such in the matter.

The action in effect made the State of Washington a party to the litigation.

The District Court of the U. S. is not clothed with jurisdiction under the Federal Interpleader Act to accomplish either of the results sought in the action.

Assuredly a corporation or other person engaged in litigation in two different States concerning the ownership of the same *res* by different groups of claimants in the differ-

ent States cannot await the termination of the various suits and *then* avail itself of the Interpleader Act in order to reverse one of the State court decisions in absence of a Federal question involved in such decision. If, as stated by the U. S. District Court of the District of Idaho, the petitioner in intervention (the Sunshine Mining Company) is precluded by the judgment against it in the Idaho State court from bringing this interpleader suit, then it is likewise precluded from doing so by the earlier and equally definite judgment of the Washington State court sitting in probate and by the suit in equity pending in that State seeking to enforce the earlier judgment.

The Denial by the U. S. Supreme Court of a Petition for a Writ of Certiorari is not an Affirmance of the Decision Sought to be Reviewed and no Jurisdiction Can Be Based on a Contrary Assertion.

Another and important point that we will argue more at length hereinafter is this:

Even if the jurisdictional facts as to amount of claim and diversity of citizenship required under the Interpleader Act are present, the Eleventh Amendment to the Constitution of the United States prohibits the bringing into an interpleader suit, as a party respondent, of one of the States, by naming as respondents State officials (such as Judge Hawkins and the receiver Cheney), who are acting in accordance with, and enforcing the laws of, that State.

Even if it is decided that, on the pleadings, the U. S. District Court had jurisdiction in the premises, that court and the Circuit Court of Appeals should still be reversed because their decisions are based on legal conclusions directly contravening the decisions of this Supreme Court.

The District Court held that because this Supreme Court denied the Washington Group a petition for certiorari to

review the decision of the Supreme Court of Idaho wherein that court held that the Washington courts had no jurisdiction of the subject matter and parties, such denial by this Court was an affirmance of the decision sought to be reviewed. (See Syllabus #8, *Sunshine Mining Co. v. Treinies*, 19 Fed. Supplement 587.) This is clearly error.

The Decisions of the Washington Courts Must Control the Decisions of Other State and Federal Courts in Cases Involving the Interpretation of Washington Laws.

Again the U. S. District Court held that the Washington Superior Court, sitting in probate, did not have continuing jurisdiction until the estate was closed and the executor discharged, over the uninventoried assets of the estate and also supervision over extrajudicial agreements for distribution of assets made by heirs, and that the Washington court's jurisdiction was not prior and exclusive. That decision is clearly contrary to the Constitution and Statutes of the State of Washington. The jurisdiction of Washington courts is to be determined by those courts under Washington laws and decisions, and Washington courts cannot be deprived of that jurisdiction, so determined by them, by the *fiat* of the courts of a different State or by a Federal court. Despite an express stipulation to the contrary made in the Idaho (State) District Court trial, the Supreme Court of Idaho refused to recognize the force and effect of Washington laws, thereby denying the full faith and credit which Art. IV, section 1, of the United States Constitution requires each State to accord to the public acts and judicial proceedings of every other State.

Where jurisdiction of the U. S. District Court is, as in the present case, challenged on appeal to the Circuit Court of Appeals, it is necessary for that court to determine such question of jurisdiction. If, in order to determine that question it is necessary to examine the facts set forth in the

record and the laws of the two States involved (which laws were pleaded in the record), it is grievous error for the Circuit Court of Appeals to refuse to consider those facts and laws ("relitigate the issues") to decide arbitrarily in favor of the decision of one State, and to ignore that of the other State.

In so doing in the present case the Circuit Court of Appeals has denied the equal protection of the laws accorded to petitioner by section 1 of the XIV Amendment and has initiated a practice clearly subversive of the following principle announced by Mr. Justice McReynolds in *Sanders v. Armour Fertilizer Works*, 292 U. S. 190 at 199, with reference to the Interpleader Act:

"The Statute is remedial and to be liberally construed. It is broad enough to cover any adverse claims against the proceeds of the policies, no matter on what grounds urged."

ARGUMENT.

The writ herein prayed for should be granted on either of two broad grounds: First: That the United States District Court had no jurisdiction under the Federal Interpleader Act to entertain the action. Second: If it had that jurisdiction then it and the Circuit Court of Appeals erred grievously in their decisions, the former in its interpretation of the laws of Washington and its disregard of decisions of this Supreme Court, and the latter, by its refusal to consider the facts of record and the laws of the two States involved in order to determine which State court judgment should be accorded the aid of a court of equity of the United States and by its arbitrary selection of the decision of one State court in preference to that of the other thereby violating the "equal protection of the laws" clause of the Fourteenth Amendment.

FIRST SECTION.

I.

The United States District Court had no jurisdiction to entertain this interpleader action, because;

1. By the Laws of the State of Washington the Superior Court of that State sitting in probate, had jurisdiction and control of the *res* and jurisdiction over the parties, who were voluntarily before the court. It had a continuing jurisdiction over the uninventoried assets of the estate and the extra judicial division of the same by heirs until the estate was closed and the executor discharged.

2. By its final decree (May 31, 1935) both claimants having litigated the issues before it, the Washington court, in the probate proceedings, had adjudged the ownership of the *res* in question to be in the petitioner herein. By that decision the Idaho claimant was enjoined from further litigating the question of ownership in the Washington courts, and the title to the stock in question became *res adjudicata* and could not be relitigated in a Federal court where neither fraud nor a Federal question was involved.

3. Because an interpleader action cannot be brought for the purpose of reversing the decision of a State court, in the absence of fraud, and where the State court has jurisdiction.

4. Because the inclusion of Judge Hawkins and Cheney, his receiver, in the interpleader suit as parties respondent, is an effort indirectly to interplead the State itself and therefore makes the action one by citizens of the State of Idaho against the State of Washington itself, contrary to the provisions of the Eleventh Amendment.

II.

It is the settled law in Washington that the Superior Courts sitting in probate have continuing jurisdiction after the entry of the decree of distribution; (1) To administer on additional assets of the estate first called to its attention after the entry of the decree; (2) To supervise and approve or disapprove agreements of partition between the heirs; and (3) To supervise the distribution it has ordered and to inquire into the accuracy of receipts filed by the heirs.

1. Under the laws of Washington, it is the duty of the executor to call to the attention of the court all the assets of the estate, and it is against the public policy of the State to permit heirs or executors to agree to withhold assets from administration. If the court discovers at any time prior to the final discharge of the executor that assets have been withheld from administration, it must proceed to administer upon them. It is well established that the entry of a decree of distribution in no wise affects the court's jurisdiction to administer upon newly discovered property.

2 Woerner Am. Law Adm., P. 1374, 1375, 1376;

Hazelton v. Bogardus, 8 Wash. 102, 35 Pac. 602;

Boardman v. Watrous, 178 Wash. 690; 35 Pac. (2d) 1106.

See also cases listed under No. 2.

(2) The statutes of Washington specifically make it the duty of the administrator to call to the court's attention all the assets of the estate.

Rem.'s Rev. Stats., Sec. 1462, 1465.

The Superior Court sitting in probate has continuing jurisdiction to compel the executor to account for assets which it is contended he has not distributed.

McLaughlin v. Barnes, 12 Wash. 373, 375, 41 Pac. 62;

State ex Rel. Reser v. Superior Court, 13 Wash. 25, 42 Pac. 630;

In re Dyer's Estate, 161 Wash. 498, 297 Pac. 196.

(3) Under the procedure for closing estates prevailing in Washington, the court retains jurisdiction after the decree of distribution, to supervise, approve, or, if the parties cannot agree, to order partition.

Rem. Rev. Stats. Sec. 1533.

(4) Upon the death of the owner of real or personal property, his estate usually vests in two or more persons in cotenancy, or is distributed to them in undivided interests and any one of them has an absolute right to a partition.

20 R. C. L. 725, Sec. 9.

(5) Prior to the enactment of statutes conferring upon probate courts jurisdiction to make and supervise partition between heirs, it was necessary for them to resort to independent suits to convert their undivided interests into estates in severalty.

20 R. C. L. 725.

(6) Eventually to protect creditors, legatees and executors, the rule grew up that "proceedings for partition . . . should be delayed until the estate, as to the debts against it and legacies, may be found, upon adjudication, to be fully settled."

Thomas v. Thomas, 35 N. W. (Iowa) 696;

See also: *Syllabus, Beecher v. Beecher*, 43 Conn. 556;

Hubbard v. Ricart, 23 Am. Doc. (Vt.) 198.

(7) In an effort to simplify procedure, many States, including Washington, have adopted statutes which confer on courts exercising probate powers, broad jurisdiction to effect and approve partition. And these proceedings have been entertained after the entry of the decree of distribution.

(a) The contention of respondents herein is set forth in *Robinson v. Fair*, 128 U. S. 53, 32 L. Ed. 415 at 422, and is there held unsound, as follows:

“It is contended that its (the probate Court’s) control over the estate ceased when it approved the final settlement, and, by a decree of distribution, defined the nature and extent of the interests of the heirs in the remaining estate of the decedent.”

The above case held that the Circuit Court of the United States had no jurisdiction to set aside the decree of the Probate Court because of error. The case is authoritative because, while deciding a California case, the Probate Court of California exercised a jurisdiction similar to the Superior Courts of Washington sitting in probate. The *Robinson* decision held them to be courts of “superior jurisdiction”.

(b) Other cases in support of this proposition are:
McCarty v. Patterson, 71 N. E. (Mass.) 112.

“The probate Court had jurisdiction of this petition (for partition) whether the estate had been settled or was in course of settlement.”

In *Earl v. Rowe*, 58 Am. Dec. (Maine) 714, there was a lapse of several years after the entry of the decree of distribution before partition proceedings were instituted. It was said:

“The exercise of the power is not limited to any particular time or number of years after the estate is settled.”

(8) This sequence has been adopted in the State of Washington in *Webster v. Seattle Trust Co.*, 7 Wash. 642, 33 Pac. 970. Construing a case under the old territorial laws, the court said:

“Probate Courts were authorized to partition real estate in aid of final distribution, Chap. 108 Code of 1881, and partition, in the absence of statutory provisions, is a distinct branch of equity, and yet it is quite commonly in this country within the jurisdiction of probate Courts.”

The probate code subsequently adopted gave the Washington courts the widest powers as to partition. (See Rem. Rev. Stats. 1533.) A later Washington case in which the jurisdiction of the court to make an order of partition after the decree of distribution has been entered, is *Bayer v. Bayer*, 83 Wash. 430, 145 Pac. 433. The situation is thus stated by the court:

“The object of the action was (a) to vacate a decree of distribution entered in the Superior Court of King County upon a non-intervention will, and (b) to vacate a decree of partition entered in the Superior Court of Lincoln County following the decree of distribution.”

Again the court held that the lower court had jurisdiction to enter this decree. This case is a notable decision in which all the earlier provisions of the Constitution with regard to probate law and its construction as decided by the court in earlier decisions is reviewed.

(9) When analyzed, Sec. 1533 is discovered to be merely a convenient statutory method by which the probate court may enforce its decree, a power which is possessed by every court of general jurisdiction.

“Jurisdiction once acquired is not exhausted by the rendition of judgment, but continues until such judgment is satisfied, and includes the power to issue all proper process and to take all proper proceedings for its enforcement.”

15 C. J. 812.

Wright v. Suydam, 79 Wash. 550, 140 Pac. 578;

Mutual Reserve Ass'n v. Phelps, 190 U. S. 147, 47 L. Ed. 987.

The Supreme Court of Washington has twice been squarely presented with the question of whether the Superior Courts sitting in probate have continuing jurisdiction to administer further upon an estate after the entry of a decree of distribution, where it appears that the executor has not complied with the statutory requirement of filing receipts, and both times it has squarely held that they have. (See *State ex Rel. Reser v. Superior Court* and *In re Dyer's estate, supra.*)

The rule in Washington, then, is that the heirs may dispose of the property by agreement, but the property so disposed of and the agreement remain subject to the court's jurisdiction and approval until receipts are approved and the executor finally discharged; and this is indisputably the rule as to uninventoried property never called to the attention of the court, where all the parties petition the court for relief, as in the present case.

(10) Under the above powers as to the supervision of partition and in the exercise of its general jurisdictional powers, whatever view may be taken of the probate law of Washington, upon the filing of Katherine Mason's petition seeking relief in the estate of Amelia Pelkes, the court entertaining jurisdiction, inasmuch as it had full power, was further empowered to make a binding order determining the issues presented by the petition.

Kline v. Burke Const. Co., 260 U. S. 226, 67 L. Ed. 226.

(11) Since the Washington constitutional and statutory provisions and powers remain unchallenged, the basis of the decisions of the Idaho Supreme Court and of the United States District Court for Idaho is swept away. The wisdom of the decisions of the Washington courts is not open to review and the jurisdictional powers are unquestionably present, where the parties appeared in the probate proceeding and by petition, and no other proceeding in rem existed.

The interpleader action involves a collateral attack on a Washington judgment, contrary to local law, and contrary to the actual Washington decisions in the instant case, and in other cases, and, if sustained, would be a denial of the "full faith and credit" accorded by the Constitution of the United States to the acts and proceedings of the Washington courts.

III.

The Federal Interpleader Act does not authorize a citizen of one State to bring an action in a Federal court against another State.

An interpleader action under the Federal Interpleader Act cannot be brought "to compel or restrain State action". (*Worcester County Trust Co. v. Riley*, 58 Supr. Ct. Rep. 185, 187). This Court in the last cited case said "a suit nominally against individuals but restraining or otherwise affecting their action as State officers, may be in substance a suit against the State, which the constitution forbids." (Citing many cases.)

SECOND SECTION.

If it should be held that the U. S. District Court had jurisdiction to entertain the action, the decision should be reversed for the various reasons briefly above stated, namely:

I.

The District Court's holding that Washington Superior Courts sitting in probate have no continuing jurisdiction over uninventoried assets and that this theory is supported by the denial of a petition for a writ of certiorari by the United States Supreme Court is erroneous in both instances.

The U. S. District Court decided that the original decree of distribution of the Amelia Pelkes Estate on August 9,

1923, by the Washington Superior Court left that court without further jurisdiction in those proceedings. Since the estate proceedings were not closed and the court always retained jurisdiction over the extra-judicial division of unlisted assets by the heirs, which jurisdiction was sustained by the Washington courts in the same proceedings and was in accordance with the Constitution, laws and judicial decisions of that State, the U. S. District Court was in error. That has been amply shown at pages 22 to 28, inc., herein.

In this respect the U. S. District Court and also the Circuit Court of Appeals have decided an important question of local law in a way in conflict with applicable local decisions (cited at pages 28 to 33, *supra*) and for that reason their decisions should be reversed.

The U. S. District Court was probably influenced in its decision by the mistaken notion that, because the Supreme Court of Idaho had decided that the Washington court had no jurisdiction and this Supreme Court had denied petitioner a writ of certiorari to review that decision, such denial constituted an affirmance of the judgment.

This is clearly error, as this Court plainly stated in *United States v. Carver*, 260 U. S. 482, 490; *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U. S. 258, 60 L. Ed. 634.

II.

The Federal Interpleader Act cannot be utilized to secure the reversal of a judgment rendered by a State court acting within its jurisdiction and no Federal question being involved.

The U. S. District Court held as follows (Syllabus 9, *Sunshine Mining Co. v. Treinies*, 19 F. Supp. 587):

“9. Where Washington court rendered decree distributing decedent's personalty and had no continuing jurisdiction, under statutes, and distributee instituted

Idaho proceeding against holders of stock, who appeared, to enforce oral trust arising out of distribution of stock, and then instituted proceeding in Washington for partition of stock, resulting in decision for holders, and Idaho Supreme Court rendered decision for distributee, and United States Supreme Court denied petition for certiorari, Idaho Supreme Court decision finally adjudicated title to stock and barred statutory interpleader action in so far as it sought to deprive distributee of title (Rem. Rev. Stat. Wash. §§ 466, 1371, 1533; 28 U. S. C. A. § 41 (26))."

The finding is based on the erroneous interpretation of the Washington laws. It, in effect, holds that if a respondent in the interpleader action has a final judgment in his favor declaring him to be the owner of the *res* in question, the judgment is "barred" from attack "in so far as it sought to deprive distributee of title", by "statutory interpleader action".

In other words the theory of the court appears to be that if the effect of the interpleader action is to deprive respondent of title under an Idaho judgment the action is barred on the same reasoning, if the Washington judgment is equally correct and conclusive and prior, as to both jurisdiction and time of rendition is not the petitioner equally barred from attacking *that* judgment "in so far as it sought to deprive the Washington distributee of title"?

We agree with the apparent conclusion of the District Court that the "statutory interpleader action" is barred if its purpose is to reverse the judgment of a State Court. THERE MUST, HOWEVER, BE NO DISCRIMINATION BETWEEN STATE COURTS.

Since the inevitable result in this action must be either the reversal of a Washington court which had adjudicated title to one group or the reversal of an Idaho court which had decreed title to another group, it would seem that, under

the logic of the decision of the District Court itself it did not have jurisdiction of the action.

If upon examination it results that the decisions of both the Washington and Idaho courts, although conflicting, were correct, then we have a condition described by this Supreme Court in the case of *Worcester County, etc., v. Riley*, 58 Sup. Ct. Rep. 185, at 188.

"But conflicting decisions upon the same issue of fact do not necessarily connote erroneous judicial action. Differences in proof and the latitude necessarily allowed to the trier of fact in each case to weigh and draw inferences from evidence and to pass upon the credibility of witnesses, might lead an appellate court to conclude that in none is the judgment erroneous. In any case the Constitution of the United States does not guarantee that the decision of State courts shall be free from error, Central Land Co. v. Laidley, 159 U. S. 103, 16 S. Ct. 80, 40 L. Ed. 91; Tracy v. Ginzberg, 205 U. S. 170, 27 S. Ct. 461, 51 L. Ed. 755; or require that pronouncements shall be consistent." (Italics ours.)

III.

When the record contains the evidence of the jurisdictional facts and the laws of two States whose courts have rendered opposing judgments concerning the title to the same personal property, it is the duty of the Circuit Court of Appeals, assuming that it has jurisdiction of the action, to consider and pass upon the said facts and applicable State laws in order to determine whether or not either State had jurisdiction to render its judgment.

Upon appeal, the Circuit Court of Appeals held that the District Court had jurisdiction because respondents were citizens of different States and more than \$500.00 was in controversy and deposited with the registry of the court. It did not discuss the question of the indirect involvement of

State as a party respondent nor would it consider either the facts or the laws of the two States involved by virtue of which each claimed the prior and exclusive jurisdiction to be in its own courts and denied categorically the jurisdiction of the other's courts over the *res*.

If jurisdiction lay in the U. S. District Court then the duty of the Circuit Court of Appeals was clear:

"The Court is to weigh the right or title of each claimant under the law of the State in which it arose and determine which according to equity is better." (*Sanders v. Armour Fertilizer Works*, 292 U. S. 190 at 200.)

This the Circuit Court of Appeals refused to do. It thereupon held that the Idaho courts, having a right to examine into the jurisdiction of the Washington courts and having decided against their jurisdiction, must be sustained, without consideration of the fact that the Washington courts first obtained jurisdiction, first adjudicated the title involved, and declared that the Idaho courts had no jurisdiction. This refusal to consider the facts and the laws of Washington is a grievous error and a violation of the full faith and credit to which Washington judgments are entitled under Art. IV, Sec. 1, of the U. S. Constitution.

We further assert that, assuming jurisdiction to have been in the District Court, its refusal to perform its duty as outlined by Justice McReynolds in the *Sanders* case, *supra*, was a violation of petitioner's constitutional rights to due process of law.

The questions herein discussed and the arguments presented are merely outlined, petitioner bearing in mind the requirement of Rule 38 demanding conciseness and brevity. The matters in question here are of the utmost general importance and should be decided by this Court. Counsel are prepared and desire the opportunity to present an elaborate

brief and thorough discussion of the points at issue and will do so if the writ be granted.

Conclusion.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the constitutional rights of petitioner be preserved; that the interpretation of local laws of the State of Washington by the Federal courts be made to harmonize with the interpretation of those laws by the Washington courts and, in order further, that the decision of the United States District Court and the Circuit Court of Appeals be made to harmonize with prior decisions of this Court, and that to said end a writ of certiorari should be granted and this Court should review the decision of the United States District Court for the District of Idaho and the decision of the U. S. Circuit Court of Appeals for the Ninth Circuit and finally reverse them.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 626

EVELYN TREINIES,

Petitioner,

vs.

SUNSHINE MINING COMPANY, KATHERINE
MASON, T. R. MASON, LESTER S. HARRISON,
GRACE G. HARRISON, WALTER H. HANSON, EDNA
B. HANSON AND F. C. KEANE.

**SUPPLEMENT TO PETITION FOR WRIT OF
CERTIORARI**

Since filing the petition for a writ of certiorari in the above entitled action, the case of *Asher v. Bone*, 100 F. (2d) 115, and reported in the advance sheets under date of January 30, 1939, decided in the same Circuit Court of Appeals which made the decision in the present case, has been published.

We cite the decision as being in substantial conflict with the case at bar in the following particulars, in that it holds as follows:

“The jurisdiction to determine the interest of respective claimants on an estate in Idaho is exclusively

in the probate courts of that state having jurisdiction of the proceeding and the determination thereof by such probate court, whether right or wrong, is conclusive and subject only to be reversed, set aside or modified on appeal" (317).

The record in the present case shows that the Idaho Group petitioned in the Washington probate proceedings that the stock in question be decreed to be their property. Those probate proceedings had not then been closed. By their action the Idaho Group submitted themselves to the jurisdiction of the Washington Superior Court sitting in probate. Later, challenging that court's jurisdiction, the Idaho Group sought, by prohibition proceedings in the Supreme Court of Washington, to prohibit the Washington Superior Court from proceeding with the matter. Prohibition was denied by the Supreme Court of Washington and the jurisdiction of the Superior Court consequently upheld (R. 291).

In *Asher v. Bone, supra*, one Osburn, having the requisite diversity of citizenship, had appeared in the U. S. District Court, and had objected to its jurisdiction. He, however, failed to join in the appeal to the Circuit Court of Appeals from the District Court's judgment. It was held by the Circuit Court of Appeals that, despite the fact that the U. S. District Court had no jurisdiction of the controversy, the decree of the U. S. District Court was binding on Osburn so far as it affected property distributed to him (Decision, p. 319).

The record in the present case shows that, while the probate proceedings were still open in the Washington Superior Court, the Idaho Group not only subjected themselves to the jurisdiction of that court, but were the very parties invoking such jurisdiction, and that they never appealed from the final adjudication of the Washington Courts affirming such jurisdiction.

The U. S. District Court in this present action held that it had no jurisdiction to reverse the Idaho State courts. By the same token it had no jurisdiction to reverse the Washington State courts. Nevertheless it has proceeded to make the decision of the latter court ineffective by restraining the Washington Group, who have properly objected to the U. S. District Court's jurisdiction and *have* appealed to the Circuit Court of Appeals, from proceeding to enforce their Washington judgment.

The two decisions are therefore in substantial conflict and call for the exercise of the supervising powers of this Supreme Court.

San Francisco, California, February 10th, 1939.

Respectfully submitted,

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